

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 4:05-CV-329-GKF-PJC
	:	
TYSON FOODS, INC., et al.,	:	
	:	
Defendants.	:	

**STATE OF OKLAHOMA’S MOTION TO STRIKE UNTIMELY
SUPPLEMENTAL REPORT AND CONSIDERED MATERIALS OF DEFENDANTS’
DAMAGES EXPERTS WILLIAM H. DESVOUSGES AND GORDON C. RAUSSER
AND INTEGRATED BRIEF IN SUPPORT**

Pursuant to Federal Rules of Civil Procedure 16(f), 26(a) and (e), and 37(c), the State of Oklahoma (“State”), respectfully moves the Court to strike four items Defendants produced on June 30, 2009 and July 6, 2009: (1) the “Errata” to the Expert Report of William H. Desvousges, Ph.D., and Gordon C. Rausser, Ph.D. (Ex. A); (2) the Declaration of William H. Desvousges, Ph.D. (Ex. B); (3) the Declaration of Gordon C. Rausser, Ph.D. (Ex. C); and (4) the 620-page Desvousges/Rausser document production provided by Defendants on July 6, 2009.

I. BACKGROUND

Defendants have identified Desvousges and Rausser (collectively, “D/R”) as testifying experts for purposes of trial, and the purpose of their work in this case has been trial testimony. In their original report dated March 31, 2009 (“D/R Report”), D/R estimated a regression model “[t]o evaluate the potential effect of water quality on visitation at COE [Corps of Engineers] lakes.”¹ (Dkt. #2270-2, D/R Report, p. 18.) To do so, they used the “average water clarity of the

¹ D/R developed their recreation model with the intent of undermining the State’s contingent valuation study.

lake,” i.e., the “meanclarity” variable. (*Id.*, pp. 18-19.) Specifically, D/R claimed to measure whether changes in water quality impacted recreation at Tenkiller Lake. (*Id.* at 18.) At the time, they asserted that “*none of the indicators for water clarity were found to significantly predict visitation.*” (*Id.* (emphasis added).) Based on this finding, D/R concluded that “recreation at Tenkiller Lake has not been impacted by changes in water quality and . . . recreators have not experienced any potential losses from alleged injuries attributable to increased phosphorous loadings. . . .” (*Id.*)

Stated another way, in their original report, D/R relied on the absence of a statistically significant relationship between water quality and visitation to conclude that recreators at Tenkiller Lake have not been harmed by any alleged injuries due to increased phosphorus loadings. As illustrated in the State’s June 19, 2009 motion to exclude portions of D/R’s expert damages report (Dkt. #2270 [“State’s D/R *Daubert* Motion”]), the foregoing conclusion is based on incorrect data. Specifically, D/R: (1) relied on an incorrectly coded 2007 visitation number for Tenkiller Lake; (2) omitted altogether data for Broken Bow Lake; and (3) miscoded Lake Fort Supply’s reported lake depth. (*See* State’s D/R *Daubert* Motion at 4-6.) As explained in the State’s D/R *Daubert* Motion, correcting for any of these errors is fatal to D/R’s seminal conclusion that “none of the indicators for water clarity were found to significantly predict visitation” (D/R Report at 18). Specifically, “[w]hen any, all, or any combination of the foregoing three errors is corrected, and D/R’s regression model is re-run, the ‘meanclarity’ variable is found to be positive and statistically significant, meaning that water clarity does impact lake visitation, directly contradicting D/R’s claim that it does not.” (Dkt. #2270, p. 7.)

On June 30, 2009 — eleven days after the State filed its D/R *Daubert* Motion — Defendants produced the second “Errata” to the original D/R Expert Report, as well as D/R’s

new Declarations.² The “Errata” reflects opinions that Defendants intend to offer at trial. This is manifestly clear where in their respective Declarations that accompanied the “Errata,” Desvousges and Rausser each state that “If called to testify at trial, I would testify consistent with the opinions expressed in our report and errata.” (Ex. B ¶ 6; Ex. C ¶ 6.)

In the “Errata,” D/R claim to have re-run their regression model having “corrected some mistakes in the data,” without identifying which ones. (Ex. A at 1.) Among other things, the “Errata” presumably attempts to cure three fatal data errors in the D/R recreation model, which were brought to Dr. Desvousges’ attention during his deposition on May 14, 2009 and raised in the State’s D/R *Daubert* Motion. Conveniently, Defendants waited six weeks to produce the “Errata,” i.e., until after the State filed its D/R *Daubert* Motion.³

In any event, D/R’s original report and “Errata” reach *opposite* conclusions about the correlation between water quality and visitation at Lake Tenkiller. They now find that “*mean water clarity significantly affects visitation*” (Ex. A at 2 (emphasis added)), whereas their original report found no such correlation. (Dkt. 2270-2, D/R Report, p. 18.) Yet, D/R purport to reach the *same* opinion in the “Errata,” stating that “[t]hese results provide further support for [their] conclusion that recreation at Tenkiller Lake has *not* been impacted by reductions in water quality. . . .” (Ex. A at 2-3 (emphasis added).)

Moreover, the “Errata” does not merely attempt to correct the three fatal errors challenged in the State’s D/R *Daubert* Motion; it veils a *wholly revamped* regression model, which offers an entirely new analysis reflecting at least 288 changes in data points and the

² The cover letter to the June 30, 2009 Errata and Declarations is attached hereto as Exhibit D.

³ Notably, the “Errata” is dated June 18, 2009 (*see* Ex. A), i.e., *before* the June 19, 2009 deadline for the State’s *Daubert* motion challenging the Desvousges/Rausser Report was filed. Yet, it was not produced until 11 days *after* such deadline.

addition of 16 data points made since the original report. (Ex. E, Chapman Decl. ¶ 9.M.)

Finally, on July 6, 2009, Defendants produced 620 pages of new documents relating to the “Errata.”⁴ Only upon a review of those documents did the State learn that D/R made the foregoing changes to the data for their regression model. (*See id.*) Such a wholesale — not to mention clandestine — revamping of a regression model this late in the game should not be countenanced.

In short, D/R’s “Errata,” related Declarations, and the July 6 document production exceed the bounds of permissible supplementation and should be excluded.

II. LEGAL STANDARD

Expert disclosures must be made “at the times and in the sequence that the court orders.” Fed. R. Civ. P. 26(a)(2)(C). Although a party must correct an expert disclosure if it is incorrect, Fed. R. Civ. P. 26(e)(1)(A), this rule does not permit “supplemental” reports that supply new bases for an expert’s opinions. *See, e.g., Quarles v. United States*, No. 00-cv-0913, 2006 U.S. Dist. LEXIS 96392, at *16 (N.D. Okla. Dec. 6, 2006); *see also Cohlma v. Ardent Health Svcs.*, 254 F.R.D. 426, 433 (N.D. Okla. 2008) (stating that Rule 26(e) does not permit “an opportunity to correct fatal defects in the reports they have submitted”). Opinions that are not properly or timely disclosed may not be used “on a motion, at a hearing, or at trial.” Fed. R. Civ. P. 37(c)(1). Likewise, the Court may strike a pleading if it “fails to obey a scheduling or other pretrial order.” Fed. R. Civ. P. 16(f)(1)(C) (incorporating sanction under Fed. R. Civ. P. 37(b)(2)(A)(iii)).

⁴ The cover letter to Defendants’ July 6, 2009 document production is attached hereto as Exhibit F.

Under the operative scheduling order, Defendants' expert reports on damages were due on March 31, 2009 (following a one-month extension).⁵ (Dkt. #1918, p. 12.) The Court has made it eminently clear that any new expert disclosure “that states *additional opinions or rationales* . . . exceeds the bounds of permissible supplementation and is subject to exclusion.” (Dkt. #1839 at 3 (emphasis added) (quoting *Palmer v. Asarco Inc.*, No. 03-cv-059, 2007 U.S. Dist. LEXIS 56969, at *15 (N.D. Okla. Aug. 3, 2007).)

III. ARGUMENT

A. D/R's “Errata” and Related Material Should Be Stricken as They Exceed the Bounds of Permissible Supplementation

D/R's “Errata” should be stricken for at least three reasons: (1) the “Errata” advances an entirely new rationale for D/R's opinions (which in fact contradicts the original rationale); (2) it surreptitiously replaces hundreds of data points in the regression model; (3) it was followed by a 620-page document production made on July 6, well after the State's May 15, 2009 deadline to take discovery from Defendants' damages experts, and weeks after the State filed its *Daubert* challenge relating to the D/R Report.

First, although the “Errata” does correct “errors in the data used in the regression model” (Ex. B ¶ 5; Ex. C ¶ 5), it offers a substantially new analysis, namely, that although “mean water clarity *significantly affects visitation*,” recreation “has not been impacted by reductions in water quality.” (See Ex. A at 2-3 (emphasis added).) This rationale departs radically from the D/R Report, in which D/R based their conclusion that “recreators have not experienced any potential losses . . . attributable to increased phosphorous loadings” on the (erroneous) finding that poor water quality *does not impact visitation* (see D/R Report at 18). (Ex. E, Chapman Decl. ¶¶ 7, 7.A.) Put another way, whereas the D/R Report expressly relied on the *absence* of a statistically

⁵ The State had until May 15, 2009 to depose Defendants' damages experts. (Dkt. #1979 ¶ 5.)

significant relationship between water quality and visitation, the “Errata” purports to rely on the *presence* of a statistically significant relationship to reach the same conclusion.

Therefore, the “Errata” is an improper attempt to bolster an evident weakness in the D/R Report in the face of the State’s D/R *Daubert* Motion. *See Quarles*, 2006 U.S. Dist. LEXIS 96392, at *17; *see also Cohlmia*, 254 F.R.D. at 433-34 (holding that opinion “devoid of rationale” could not be cured through supplementation); *Beller v. United States*, 221 F.R.D. 696, 702 (D.N.M. 2003) (striking supplemental expert report because its opinions differed from previous report). Specifically, it attempts to “correct fatal defects” in one theory by replacing it with another. *See Cohlmia*, 254 F.R.D. at 433. In so doing, the Errata impermissibly “alter[s] a formerly complete analysis.” *Wechsler v. Hunt Health Sys., LTD*, 381 F. Supp. 2d 135, 156 (S.D.N.Y. 2003). Accordingly, “it exceeds the bounds of permissible supplementation and is subject to exclusion.” (Dkt. #1839 at 3 (internal quotation marks omitted).)

Second, the Errata makes no mention of the *hundreds* of changes made in the D/R regression model since the original report. Overall, D/R changed at least 288 data points and added an additional 16 data points not provided in their original data accompanying the original report. (Ex. E, Chapman Decl. ¶¶ 8, 9.M.) These hundreds of changes are specifically identified in the accompanying Declaration of David Chapman. (*Id.* ¶¶ 9.D through M.) Such changes include replacing or adding data points relating to the mean clarity, lake level, camp sites, boat ramps, shore acres, distance, state parks, and lake depth variables. (*Id.*)

They also include numerous errors that would be appropriate for examination during a deposition and for inclusion in the context of a *Daubert* challenge. For example:

- The Errata states: “The revised model results also show that there is no significant time trend in visitation across sites. These results provide further support for our conclusion that recreation at Tenkiller Lake has not been impacted by reductions in water clarity.” (Errata, pp. 2-3.) However, the D/R revised model combines

attendance at all lakes included in their model, rather than using individual lake attendance. Therefore, their time trend coefficients represent an aggregate trend in visitation across all sites and cannot be used to deduce specific conclusions about visitation over time at Tenkiller Lake. (Ex. E, Chapman Decl. ¶ 7.B.)

- D/R do not provide the actual data file used to estimate their new model that they report in the Errata. (*Id.* ¶ 9.A.)
- D/R do not document a change to the visitation data for Tenkiller Lake in 2007, one of the three fatal errors identified in the State's D/R *Daubert* Motion. (*Id.* ¶ 9.B.)
- Defendants have not produced the source for visitation data cited by D/R in their Errata. (*Id.*)
- Over 50% of the visitation data observations used by D/R in their revised model do not match the visitation data from the Army Corps of Engineers, their claimed source of information. (*Id.* ¶ 9.C.)
- The D/R boat ramps variable does not represent the actual number of boat ramps at the lakes, as reported by the Army Corps of Engineers. (*Id.* ¶ 9.H.)

Third, on July 6, 2009, Defendants produced 620 pages of documents, a production made well after the State's May 15, 2009 deadline to take discovery from Defendants' damages experts, and weeks after the State filed its D/R *Daubert* Motion.

As described more fully below, all of these materials should be stricken.

B. D/R's "Errata," Declarations and July 6 Document Production Are Neither Justifiable Nor Harmless

Supplementing the original D/R Report, the "Errata" and Declarations far exceed the appropriate bounds of Rule 26 supplementation. A party who offers information that fails to comply with Rule 26(a) or (e) "is not allowed to use that information . . . on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). Four factors guide this analysis: (1) the prejudice or surprise to the party against whom the testimony is offered; (2) the ability to cure that prejudice; (3) the extent to which introducing such testimony would disrupt the trial; and (4) the proponent's bad faith or

willfulness. *See Woodworker's Supply, Inc. v. Principal Mut. Life*, 170 F.3d 985, 993 (10th Cir. 1999).

Each of the foregoing factors militates in favor of striking the “Errata,” the Declarations, and the July 6 document production. The “Errata” purports to abandon a central rationale of the D/R Report, namely, that the absence of a statistical relationship between water quality and visitation supports Defendants’ conclusion that recreators at Tenkiller Lake have not suffered any losses. Given its importance, this analysis plays a central role in the State’s D/R *Daubert* Motion, and it would significantly prejudice the State to permit Defendants to shift gears at the eleventh hour. It is impractical, if not impossible, for the State to depose D/R on their new analysis, either for the purposes of *Daubert* or trial, without disturbing the trial date. Defendants have exacerbated these factors by having waited until *after* the State filed its D/R *Daubert* Motion to produce this information, even though counsel for the State brought these errors to Defendants’ attention on May 14, 2009.

Moreover, the prejudice suffered by the State is heightened because counsel’s time and energy are fully devoted to completing *Daubert* briefing, preparing for the hearings on *Daubert* and dispositive motions, fulfilling other extensive pre-trial obligations, and otherwise preparing for trial under a rigorous scheduling order. Because the scheduling order does not afford the State the time or opportunity to depose D/R about the Errata, their Declarations, and the 620-page July 6 document production — and because Defendants have deprived the State the opportunity to incorporate such information in the State’s *Daubert* challenge — the State would suffer undue prejudice from the allowance of such information to be relied on at trial or for any other purpose.

IV. CONCLUSION

For the foregoing reasons, the State requests that the Court enter an order striking Defendants' June 30, 2009 "Errata," Declarations of William H. Desvousges, Ph.D. and Gordon C. Rausser, Ph.D., and Defendants' July 6, 2009 document production.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
ATTORNEY GENERAL
Kelly H. Burch OBA #17067
ASSISTANT ATTORNEYS GENERAL
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

/s/ Richard T. Garren

M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
David P. Page OBA #6852
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Louis W. Bullock OBA #1305
Robert M. Blakemore OBA 18656
BULLOCK, BULLOCK & BLAKEMORE
110 West Seventh Street Suite 707
Tulsa OK 74119
(918) 584-2001

Frederick C. Baker
(admitted *pro hac vice*)
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis

(admitted *pro hac vice*)
MOTLEY RICE, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice*)
MOTLEY RICE, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent
(admitted *pro hac vice*)
Michael G. Rousseau
(admitted *pro hac vice*)
Fidelma L. Fitzpatrick
(admitted *pro hac vice*)
MOTLEY RICE, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2009, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	fc_docket@oag.state.ok.us
Kelly H. Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us

M. David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert A. Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com
RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS	

Louis Werner Bullock
Robert M. Blakemore
BULLOCK, BULLOCK & BLAKEMORE

lbullock@bullock-blakemore.com
bblakemore@bullock-blakemore.com

Frederick C. Baker
Elizabeth C. Ward
Elizabeth Claire Xidis
William H. Narwold
Ingrid L. Moll
Jonathan D. Orent
Michael G. Rousseau
Fidelma L. Fitzpatrick
MOTLEY RICE, LLC

fbaker@motleyrice.com
lward@motleyrice.com
cxidis@motleyrice.com
bnarwold@motleyrice.com
imoll@motleyrice.com
jorent@motleyrice.com
mrousseau@motleyrice.com
ffitzpatrick@motleyrice.com

Counsel for State of Oklahoma

Robert P. Redemann
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.

rredemann@pmrlaw.net

David C. Senger

david@cgmlawok.com

Robert E Sanders
Edwin Stephen Williams
YOUNG WILLIAMS P.A.

rsanders@youngwilliams.com
steve.williams@youngwilliams.com

Counsel for Cal-Maine Farms, Inc and Cal-Maine Foods, Inc.

John H. Tucker
Theresa Noble Hill
Colin Hampton Tucker
Kerry R. Lewis
RHODES, HIERONYMUS, JONES, TUCKER & GABLE

jtucker@rhodesokla.com
thill@rhodesokla.com
ctucker@rhodesokla.com
klewis@rhodesokla.com

Terry Wayen West
THE WEST LAW FIRM

terry@thewestlawfirm.com

Delmar R. Ehrich
Bruce Jones
Krisann C. Kleibacker Lee
Todd P. Walker
Christopher H. Dolan
Melissa C. Collins
Colin C. Deihl
Randall E. Kahnke
FAEGRE & BENSON, LLP

dehrich@faegre.com
bjones@faegre.com
kklee@faegre.com
twalker@faegre.com
cdolan@faegre.com
mcollins@faegre.com
cdeihl@faegre.com
rkahnke@faegre.com

Dara D. Mann dmann@mckennalong.com
MCKENNA, LONG & ALDRIDGE LLP
Counsel for Cargill, Inc. & Cargill Turkey Production, LLC

James Martin Graves jgraves@bassettlawfirm.com
Gary V Weeks gweeks@bassettlawfirm.com
Woody Bassett wbassett@bassettlawfirm.com
K. C. Dupps Tucker kctucker@bassettlawfirm.com
Earl Lee "Buddy" Chadick bchadick@bassettlawfirm.com
Vincent O. Chadick vchadick@bassettlawfirm.com
BASSETT LAW FIRM

George W. Owens gwo@owenslawfirmpc.com
Randall E. Rose rer@owenslawfirmpc.com
OWENS LAW FIRM, P.C.
Counsel for George's Inc. & George's Farms, Inc.

A. Scott McDaniel smcdaniel@mhla-law.com
Nicole Longwell nlongwell@mhla-law.com
Philip Hixon phixon@mhla-law.com
Craig A. Merkes cmerkes@mhla-law.com
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC

Sherry P. Bartley sbartley@mwsgw.com
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC
Counsel for Peterson Farms, Inc.

John Elrod jelrod@cwlaw.com
Vicki Bronson vbronson@cwlaw.com
P. Joshua Wisley jwisley@cwlaw.com
Bruce W. Freeman bfreeman@cwlaw.com
D. Richard Funk rfunk@cwlaw.com
CONNER & WINTERS, LLP
Counsel for Simmons Foods, Inc.

Stephen L. Jantzen sjantzen@ryanwhaley.com
Paula M. Buchwald pbuchwald@ryanwhaley.com
Patrick M. Ryan pryan@ryanwhaley.com
RYAN, WHALEY, COLDIRON & SHANDY, P.C.

Mark D. Hopson mhopson@sidley.com
Jay Thomas Jorgensen jjorgensen@sidley.com

Timothy K. Webster
Thomas C. Green
Gordon D. Todd
SIDLEY, AUSTIN, BROWN & WOOD LLP

twebster@sidley.com
tcgreen@sidley.com
gtodd@sidley.com

Robert W. George
L. Bryan Burns
Timothy T. Jones
TYSON FOODS, INC

robert.george@tyson.com
bryan.burns@tyson.com
tim.jones@tyson.com

Michael R. Bond
Erin W. Thompson
Dustin R. Darst
KUTAK ROCK, LLP

michael.bond@kutakrock.com
erin.thompson@kutakrock.com
dustin.darst@kutakrock.com

Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., & Cobb-Vantress, Inc.

R. Thomas Lay
KERR, IRVINE, RHODES & ABLES
Frank M. Evans, III
Jennifer Stockton Griffin
David Gregory Brown
LATHROP & GAGE LC
Counsel for Willow Brook Foods, Inc.

rtl@kiralaw.com
fevans@lathropgage.com
jgriffin@lathropgage.com

Robin S Conrad
NATIONAL CHAMBER LITIGATION CENTER

rconrad@uschamber.com

Gary S Chilton
HOLLADAY, CHILTON AND DEGIUSTI, PLLC

gchilton@hcdattorneys.com

Counsel for US Chamber of Commerce and American Tort Reform Association

D. Kenyon Williams, Jr.
Michael D. Graves
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON

kwilliams@hallestill.com
mgraves@hallestill.com

Counsel for Poultry Growers/Interested Parties/ Poultry Partners, Inc.

Richard Ford
LeAnne Burnett
CROWE & DUNLEVY

richard.ford@crowedunlevy.com
leanne.burnett@crowedunlevy.com

Counsel for Oklahoma Farm Bureau, Inc.

Kendra Akin Jones, Assistant Attorney General Kendra.Jones@arkansasag.gov
Charles L. Moulton, Sr Assistant Attorney General Charles.Moulton@arkansasag.gov
Counsel for State of Arkansas and Arkansas National Resources Commission

Mark Richard Mullins richard.mullins@mcafeetaft.com
MCAFEE & TAFT
Counsel for Texas Farm Bureau; Texas Cattle Feeders Association; Texas Pork Producers Association and Texas Association of Dairymen

Mia Vahlberg mvahlberg@gablelaw.com
GABLE GOTWALS

James T. Banks jtbanks@hhlaw.com
Adam J. Siegel ajsiegel@hhlaw.com
HOGAN & HARTSON, LLP
Counsel for National Chicken Council; U.S. Poultry and Egg Association & National Turkey Federation

John D. Russell jrussell@fellerssnider.com
FELLERS, SNIDER, BLANKENSHIP, BAILEY
& TIPPENS, PC

William A. Waddell, Jr. waddell@fec.net
David E. Choate dchoate@fec.net
FRIDAY, ELDREDGE & CLARK, LLP
Counsel for Arkansas Farm Bureau Federation

Barry Greg Reynolds reynolds@titushillis.com
Jessica E. Rainey jrainey@titushillis.com
TITUS, HILLIS, REYNOLDS, LOVE,
DICKMAN & MCCALMON

Nikaa Baugh Jordan njordan@lightfootlaw.com
William S. Cox, III wcox@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE, LLC
Counsel for American Farm Bureau and National Cattlemen's Beef Association

Duane L. Berlin dberlin@levberlin.com
LEV & BERLIN PC
Counsel for Council of American Survey Research Organizations & American Association for Public Opinion Research

Also on this 17th day of July, 2009 I mailed a copy of the above and foregoing pleading to:

Thomas C Green -- via email: tcgreen@sidley.com
Sidley, Austin, Brown & Wood LLP

Dustin McDaniel
Justin Allen
Office of the Attorney General (Little Rock)
323 Center St, Ste 200
Little Rock, AR 72201-2610

Steven B. Randall
58185 County Rd 658
Kansas, Ok 74347

Cary Silverman -- via email: csilverman@shb.com
Victor E Schwartz
Shook Hardy & Bacon LLP (Washington DC)

/s/ Richard T. Garren
Richard T. Garren